

arrangement it was not an illegal one, and must be enforced as made. As to the last conclusion, the Lord Ordinary has found the defender bound to set aside and invest such sum as shall appear to have been received by him out of the pursuer's one-fourth share of her father's estate, that the pursuer may receive the liferent thereof, in respect of a provision to that effect in the marriage contract. Against that claim the defender pleaded compensation, in respect he had expended large sums on her account. To-day the case was argued and advised.

The LORD JUSTICE-CLERK, in giving judgment, said the question was a new one and important. There was no doubt that the desertion of the wife was an established fact in the case, because, except where there is fault on the part of the husband, a wife living separate from him without a decree of separation is in a state of desertion. In such a case she could not pursue an equitable claim, such as one for aliment. But her claim here was one in law under a deed of contract, and it was no answer to that to say that she had violated her conjugal duties. The husband's objection is that the wife has violated her marriage vows, but not the antenuptial contract, which determines her right to the annuity. The remedy which the husband had was an action of adherence, not to refuse to implement his obligations under the special contract. As to the sum of £1248, the wife's share in her father's estate, it was quite plain that the husband was bound to invest this so as to give precise effect to the terms of the marriage contract.

The other Judges concurred.

An interlocutor was pronounced ordaining the husband to put in a minute stating how he proposed to settle the annuity, and appointing him to consign the £1248 in the Bank of Scotland, subject to the orders of the Court.

Friday, Jan. 12.

FIRST DIVISION.

PETITION—MUIRHEAD.

Process—Tutor—Power to Grant Leases. An application by a tutor to a pupil for authority to grant leases of extraordinary duration, ordered to be intimated to the next heir of entail resident in this country.

Counsel for Petitioner—Mr Broun. Agent—Mr Sprot, W.S.

The petitioner, Robert Dalrymple Steuart Grossett Muirhead, as tutor and administrator-at-law of Miss Grossett Muirhead, heiress of entail in possession of the estate of Bredisholm, applied for authority to grant certain leases the period of endurance of which extends beyond the time when his tutory will cease. The petition prayed for intimation on the walls and in the minute-book only; and it was stated that this course had been followed in the case of Morison, 19th July 1861 (23 D. 1313), but the Court in this case appointed intimation to be made also to the next heir of entail resident in this country.

DUNLOP v. SCOTTISH NORTH-EASTERN RAILWAY COMPANY.

Proof—Diligence. Motion for a diligence to recover a return made of a party's income to the Income Tax Commissioners *refused*.

Counsel for Pursuer—Mr Mackenzie. Agents—Messrs G. & H. Cairns, W.S.

Counsel for Defenders—Mr Watson. Agents—Messrs Morton, Whitehead, & Greig, W.S.

In this action of damages for personal injuries the defenders moved for a diligence to recover, *inter alia*, the return which the pursuer had made of his income to the Income Tax Commissioners, for the purpose of proving that it was there stated at a lower sum than that at which he now represents it. The motion was refused.

ALEXANDER v. ALEXANDERS.

Reduction—Fraudulent Misrepresentation and Concealment—Essential Error. (1) Issues for the purpose of trying a question of fraudulent imputation of agreements which allowed. (2) Issue whether they were made under essential error disallowed.

Counsel for Pursuer—The Solicitor-General and Mr Gifford. Agent—Mr W. S. Stuart, S.S.C.

Counsel for Defenders—Mr Clark and Mr Shand. Agents—Messrs Melville & Lindesay, W.S.

The pursuer of this action was the eldest son and the defenders were the daughter and younger son of the deceased Robert Alexander, portioner and boat-builder, residing at Swinton, near Baillieston, in Lanarkshire. The pursuer seeks to set aside three written agreements made by him with his brother and sister in regard to the succession of their father, who died intestate. What he complains of is that by fraudulent misrepresentation or concealment, and in ignorance of the nature of his father's property and his right and interest therein, he was made to abandon valuable rights as heir-at-law, and to consent to an equal distribution of the whole property, heritable and moveable, subject to certain subsidiary arrangements. The averments of fraud and essential error were denied.

In order to try the questions thus raised the pursuer proposed three issues, putting the question in regard to each of the three agreements, whether it was fraudulently imputed from him by the defenders, or one or other of them; and also a fourth issue, putting the question in regard to all the agreements, whether they were signed by him under essential error as to the nature and extent of the estate of his father and of his legal rights therein.

The defenders objected to the issues on fraud that they should be laid not on fraud but on fraudulent misrepresentation or concealment, and should state (though generally) to what these were made applicable. They also objected to the fourth issue, on the ground that there was no relevant averment of error as a separate ground of action from the fraudulent misrepresentation and concealment.

The Court to-day granted an issue in regard to each agreement, whether it was imputed from the pursuer by fraudulent misrepresentation or fraudulent concealment on the part of the defenders, or one or other of them, in regard to the nature and extent of his father's estate and of his legal rights therein. The issue founded on essential error was disallowed, on the understanding that evidence of error on the part of the pursuer would be admissible as evidence of the issues, which were allowed.

PETITION—THE DUKE OF ATHOLE.

Entail—Entail Amendment Act. Question under section 28 of Entail Amendment Act as to what was the true date of an entail proposed to be set aside.

Counsel for Petitioner—Mr Patton. Agents—Messrs Tods, Murray, & Jamieson, W.S.

This petition was presented by his Grace the Duke of Athole for authority to acquire the Athole trust estates in fee simple, in terms of the Acts 11 and 12 Vict., c. 36, and 16 and 17 Vict., c. 94. The petition was presented with concurrence of the three next heirs of entail. Lord Mure having remitted the petition to Mr Kernack, W.S., he suggested a difficulty in regard to the competency of the application, arising out of the fact that the Entail Amendment Act, under which it was presented, had reference solely to tailzies dated prior to 1st August 1848, and it was doubtful whether this tailzie belonged to that class. It appeared that in 1829 John, fourth Duke of Athole, executed an entail of his fee-simple estates, and on the same day executed a trust conveyance of these estates, with a provision in the entail that it should not take effect until the trustees should be able out of the rents of the estates to pay off the debts